

**BEFORE THE
OIL & GAS BOARD OF REVIEW**

RICHARD HARMEYER,

Appellant,

-vs-

DONALD L. MASON, CHIEF,
DIVISION OF OIL & GAS,

Appellee.

Appeal No. 537

Review of Chief's Order 93-80

**FINDINGS, CONCLUSIONS
& ORDER OF THE BOARD**

Appearances: Gene W. Graves, Counsel for Appellant Richard Harmeyer; Ray Studer,
Assistant Attorney General, Counsel for Appellee Division of Oil & Gas.

Date Issued: June 27, 1996

BACKGROUND

This matter came before the Oil & Gas Board of Review upon appeal by Richard Harmeyer from Chief's Order 93-80. This Order required Richard Harmeyer to produce or plug eight abandoned oil wells.

On September 29, 1994, this cause came on for hearing before five members of the Oil & Gas Board of Review. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

Motions for Summary Affirmance were made by the Division at the close of Appellant Harmeyer's case-in-chief, and again at the close of all evidence. The Board denied the Motions in both instances.

ISSUE

The issue presented by this appeal is: Whether Richard Harmeyer, as lessee under an oil and gas lease, is the "owner" of certain oil wells.

Ohio's oil and gas law requires that unproductive wells be plugged. The well "owner" is responsible for plugging such wells. O.R.C. §1509.12 defines a well "owner" as the person who has the right to produce the well.

FINDINGS OF FACT

1. Prior to September 20, 1983, eight oil wells existed on the L. Lucille and W. Kenneth McClarren property in Lake Township, Wood County, Ohio. Some of these wells were drilled in the 1930's and 1940's. Other wells may have been drilled as early as the turn of the century. It is not known who drilled these eight wells. The wells were not drilled by Mr. Richard Harmeyer.

2. On September 20, 1983, the McClarrrens executed an oil and gas lease with Richard Harmeyer. The lease was effective for a ten year period. Mr. Harmeyer intended to explore for oil and gas on the McClarren property. He did not intend to produce from the existing wells. The oil and gas lease specifically mentions five existing wells. The lease also contains the following provisions:

9. If any well will be found to be unproductive, the same will be properly plugged in accordance with regulations of the proper authorities.

* * *

11. Upon execution of this oil and gas lease, lessee shall become responsible to the State of Ohio, Division of Oil and Gas under Ohio Revised Code Chapter 1509, and hold harmless the lessor for any violations or responsibility for the condition of the oil wells now located on the property described in the lease present or future.

3. Richard Harmeyer had the right to produce the existing wells on the McClarren property during the period of his leasehold.

4. The Division of Oil & Gas received a request from the landowners' granddaughter, asking that the existing wells be plugged.

5. On December 21, 1992, the Division of Oil and Gas inspected the eight wells located on the McClarren property. The Division Inspector determined that the wells were incapable of production. The condition of the various wells were as followed:

WELL #	CONDITION
Well #1	No production equipment on well. Leaking oil to the surface.
Well #2	Trees & brush growing into and around old wooden pumping unit. No power to pumping unit.
Well #3	Trees & brush growing in and around the pumping unit. Rod and tubing at the top of the wellhead bent over. No power to the pumping unit.
Well #4	Casing covered with an old bucket. Casing filled with dirt. No production equipment.
Well #5	Old pumping unit. No power to pumping unit.
Well #6	Old pumping unit. No power to the pumping unit. Rods and tubing rusted.
Well #7	Well shut in at top with a bullplug, but open at side at ground level, allowing surface water to enter. No production equipment.
Well #8	Old pumping unit. No power to pumping unit. Pumping unit rusted.

6. After execution of the oil and gas lease, Mr. Richard Harmeyer did not produce the eight wells at issue. No production reports were filed.

7. The eight wells in question lack the mechanical means to produce oil or gas, and are idle. These wells are incapable of production.

8. Mr. Harmeyer did not file with the Division a form changing the owner of the eight oil and gas wells.

9. On July 14, 1993, before the expiration of the McClarren/Harmeyer lease, Chief's Order 93-80 was issued to Mr. Harmeyer. The Chief's Order required that Harmeyer either produce or plug the subject wells. The instant appeal is from Chief's Order 93-80.

DISCUSSION

Ohio's oil and gas law requires that unproductive wells be plugged. The well "owner" is responsible for plugging such wells. See O.R.C. §1509.12.

The issue presented by this appeal is: Whether Richard Harmeyer, as lessee under an oil and gas lease, can be required to produce or plug eight pre-existing wells on the lease property?

The facts of this case reveal that Mr. Harmeyer obtained from the McClarrens an oil and gas lease in September of 1983. This lease was effective for ten years. The eight wells at issue were in existence prior to the execution of the 1983 lease. The fact that the lease mentions the existence of wells on the McClarren property indicates that Harmeyer was aware of these features when he executed the lease.

Mr. Harmeyer did not drill these eight wells. Nor did he ever attempt to produce these wells. Indeed, he claimed that he never even entered upon the McClarren property during the term of his lease. His purpose in negotiating the lease was for future exploration - exploration, which he never undertook. Therefore, Mr. Harmeyer argues that to hold him responsible for the plugging of these existing wells is unfair and unreasonable.

The Division asserts Harmeyer was the "owner" at the time the Division investigated the idle wells and at the time when Chief's Order 93-80 was issued. As "owner," the Division finds Harmeyer responsible for plugging the wells.

The case of Houser v. Brown, 29 Ohio App. 3d 358 (1986), supports the Division's position. The Houser case stands for the proposition that the "owner" is the responsible party. The persons who fall within the definition of "owner" may change over time. The crucial element of "ownership" appears to be the right to produce the wells. A lessee, during the term of his lease, possesses that right.

The Court of Appeals in the Houser case stated:

. . . R.C. 1509.12 establishes the duty to plug any well "which is or becomes incapable of producing oil or gas * * * ." Thus, a new lessee or new owner may, in essence, inherit the duty to plug a well if, in fact, he leases a well which is incapable of producing. The plain language of the statute requires this result, as does the policy of requiring the plugging of unproductive wells. This result is further bolstered by the reality of the oil and gas business, where many wells were drilled during the turn of the century. Several of these companies are now out of business and to hold only the original "owner" responsible for plugging the nonproductive wells would defeat the purpose of the statute.

(Emphasis added.)

Where a lessee acquires a lease with existing wells, the lessee acquires all of the liabilities which arise in connection with the lease, as well as all of the assets. Baldwin Producing Corp. v. Division of Oil & Gas, appeal no. 13 (Oct. 15, 1974). This is particularly true where the lease mentions the pre-existing wells. In such a case, the lessee takes the lease with full knowledge of such wells. Trenton Energy, Inc. v. Houser, appeal no. 64 (Feb. 15, 1984). In these cases, the lessee qualifies as an "owner" of the existing wells.

The Board is aware of the tenuous nature of Mr. Harmeyer's connection to the eight existing wells. Yet, Mr. Harmeyer was the lessee during the relevant time period. The law provides that during the period of his leasehold, Harmeyer assumed responsibility for these wells. Therefore, it was not unlawful or unreasonable for the Division to require Mr. Harmeyer to plug the wells.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Board will affirm the Division Chief if the Board finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.12 provides in pertinent part:

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged, . . . When the chief finds that a well should be plugged, he shall notify the owner to that effect by order in writing and shall specify in such order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. . .

3. O.R.C. §1509.01(K) defines an "owner" as:

. . .the person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

4. On July 14, 1993 [the date on which Chief's Order 93-80 was issued], Richard Harmeyer had the right to produce the eight pre-existing wells. Therefore, Mr. Harmeyer was the "owner" of the eight wells located on the McClarren property.

5. The issuance of Chief's Order 93-80 to Richard Harmeyer was lawful and reasonable.

ORDER

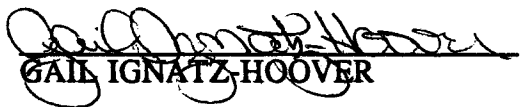
Based upon the foregoing findings of fact and conclusions of law, the Board hereby **AFFIRMS** the Division's issuance of Chief's Order 93-80.


WILLIAM J. TAYLOR, Chairman


BENITA KAHN, Secretary


JAMES H. CAMERON


JOHN A. GRAY


GAIL IGNATZ-HOOVER

R. Harmeyer
Appeal #537

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

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